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RL

THE GARDNER LAW FIRM

A PROFESSIONAL CORPORATION
745 EAST MULBERRY AVENUE, SUITE 100
SAN ANTONIO, TEXAS 78212-3167

DAVID F. BARTON
WM. RICHARD DAVIS (Retired)
JAY K. FARWELL
DAWN B. FINLAYSON
GREGORY M. HUBER
R. WES JOHNSON[†]
MARY Q. KELLY (Of Counsel)
BRAD L. SKLENCAR^{††}
WILLIAM W. SOMMERS
THOMAS J. WALTHALL, JR.
[†]Board Certified-Consumer & Commercial Law
^{††}Board Certified-Labor & Employment Law
Texas Board of Legal Specialization

TELEPHONE
(210) 733-8191

TELECOPIER
(210) 733-5538

E-MAIL ADDRESS
gardner@tglf.com

received
8/7/06

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**VIA FAX: (210) 545-4329 AND
CERTIFIED MAIL, RRR# 7003 2260 0001 0088 2056**

Mr. Richard Garcia
Region 13 Director
Texas Commission on Environmental Quality
14250 Judson Rd.
San Antonio, TX 78233-4480

Dear Mr. Garcia:

Re: Proposed Vulcan Construction Materials Quarry, Quihi, Medina County, Texas—
Proposed Water Pollution Abatement Plan (WPAP)
EAPP ID: 2502.00, Investigation # 462519, RN104921630

On July 19, 2006, we contacted your office regarding the applicant's significant substantive revisions to the above-referenced proposed WPAP, which were submitted on June 28, 2006. We noted that it would be necessary to reopen the public comment period. To date, we are unaware of any action or recommendation to the Executive Director by you or your agency on the latest revised WPAP. However, allowing for two weeks time, we have not received word as to whether the public comment period will be reopened per our July 19, 2006 letter.

We have previously requested a contested case hearing on the WPAP, in our first set of comments submitted April 21, 2006. Exhibit 1 to this letter again requests a contested case hearing and establishes MCEAA's associational standing to participate as a party in any contested case hearing.

Because TCEQ has not yet reopened the comment period, this letter will serve as additional formal comments for the record by the Medina County Environmental Action Association (MCEAA) and its members. The intent of this letter is to protect the record and preserve error and objections. Notwithstanding any procedural error by TCEQ in not reopening the public comment period, MCEAA reserves the right to supplement these comments on the proposed WPAP, as revised, at a later time. This letter, however, places TCEQ on notice.

MCEAA objects for the record to the proposed WPAP, as revised, as follows:

1. We object to the purported expert opinion provided in response to TCEQ Question 12, regarding “self-sealing” of ponds, basins, and quarry pits, by fine particles, as containing unsupported conclusory assertions, speculation, lacking in foundation and/or documentation, relying upon hearsay or inadmissible evidence, and:

- a. We further object to the purported expert opinion provided in response to TCEQ Question 12, in that the WPAP fails to disclose the rate at which fine particle sealant will be produced by allegedly settling in the ponds.
- b. We further object, in that the WPAP fails to disclose the total volume of fine particle sealant to be produced. Note that TCEQ 0600 Attachment F, Exhibit 6, “Water Quality Volume Calculations,” assumes zero input from the wash water and addresses only the removal of TSS from rainfall runoff, even in Basins A1 and A3, which are the retention/recycle basins.
- c. We further object, in that without a total volume, it is impossible to determine whether all surfaces purported to be sealed will in fact be sealed.
- d. We further object to the vagueness of the disposal method discussed on TCEQ 0584 – page 3 (original WPAP), with respect to “very fine sediments” which will be “pumped” to disposal areas, settling ponds, and mined out areas; and the “cake-like by-product” of the wash water, which will be “trucked.”
- e. We further object to the failure of the WPAP to disclose the disposition of the water volume that will be used to “pump” fine sediments.
- f. We further object to the grant of a geologic exception predicated on “self-sealing” as described in the applicant’s WPAP revisions.

2. We object to the nondisclosure of the Overby Descamps flood studies of October 2005, and any subsequent revisions, in that they have been relied upon by the applicant, considered by the agency and constitute record evidence that should have been made available for comment.

3. We object to the applicant's conclusory statement on page 44 of its WPAP revisions asserting that site activities "will not measurably affect the peak run off," and purporting to state a peak runoff value, the basis for which has not been publicly disclosed but which must constitute record evidence if the statement is to be relied upon by the agency.

4. We object to the lack of substantial evidence supporting the runoff volume calculations, a deficiency best shown by conducting a water balance for the site. A water balance should be conducted for the site. At present, various inputs and outputs are missing in the water balance due to unsupported assumptions. For instance:

- a. The volume of water that will be input to the settling ponds from spraying systems used to control particulate air pollution has not been disclosed.
- b. The purported recycling system efficiency—which cannot rely on a rate that exceeds the 500 GPM limit of the pumps—has not been disclosed. This calculation is complicated by the non-disclosure of the rate at which water will be applied for emissions control. Vulcan knows this number but does not wish to disclose it, because it would become an enforceable condition of the air permit if it were. TCEQ must request this number.
- c. Once entering the settling ponds, that volume of wash water is assumed to not exit the ponds by runoff; the WPAP assumes that it will either be recycled or evaporate. Apparently the WPAP also assumes that some of it will be used to pump fine particles, or be otherwise diverted, to the quarry pits or other disposal areas, but the WPAP does not disclose the extent of this.
- d. For the settling ponds that will receive water from the retention/recycle system, it would seem important to know, if the pumps are on and the valves are open and diverting water to the quarry pits, how much of the flood/overflow condition is attenuated. Is this assumption made in the overflow calculations that are shown?
- e. The inputs to the applicant's flood model, from which it has apparently derived a peak runoff value and purported to assess the impact of its activities, have not been disclosed. The validity of these inputs is the core of the runoff volume calculations in the WPAP, and yet they remain undisclosed. TCEQ should require the applicant to turn over its flood modeling and any reports thereto, based on the WPAP's reliance on said modeling and reports. As should be plain from the discussion above, we dispute the completeness of and purported support for the inputs in the flood model, which constitute many of the same inputs to a water balance for the site.

5. We object to the failure to consider some portion of the mined out quarry area, which will be compacted, as impervious cover.

6. We object to the failure of the WPAP to consider the upgradient infiltration/downgradient seepage relationship. Water sinks in to the ground upgradient and is discharged out of the ground downgradient, in the streams and springs south of the quarry site. How much of this is occurring and how will the quarry affect it? Was it considered in the flood model? What will the impact of withdrawing millions of gallons of groundwater per day, as proposed by the applicant, be on that process? We object to the failure of the WPAP to answer these questions as a failure to support its assertions with substantial evidence.

7. We object to unspecified “railroad maintenance” being conducted on the site, and question whether this has been brought to the attention of the U.S. Surface Transportation Board in its environmental review of the rail line.

We further request that TCEQ state, in its response to comments, when the permanent BMPs become legally enforceable. We further request that TCEQ state when and how the site plan shown in the WPAP—which is obviously necessary for the permanent BMPs to take effect and for the WPAP to have any meaning—is legally enforceable.

We respond to Vulcan’s May 10, 2006 response (EI-2057) to our earlier comments as follows:

The federal Clean Water Act (CWA) stormwater permit and applicable federal law is relevant to the extent the WPAP is, as Vulcan’s letter purports, a more stringent standard than the federal floor. If that is true, denial of a TPDES permit under the CWA is foreclosed as a practical matter by the WPAP. The issue then becomes, is the WPAP a sufficient guarantor of federal law? Vulcan has so piecemealed the permitting process that it does not acknowledge that significant federal questions being raised in CWA stormwater program litigation are potentially ripe in this process.


Vulcan disposes of many of the other points raised in MCEAA’s earlier comments by layering conclusory statements, mostly by referencing conclusory statements in the original WPAP. In addition, Vulcan makes what we consider to be a false distinction between “settling ponds” and its permanent BMPs. The original WPAP does not contain TCEQ 0602 – Attachment H, Temporary Sediment Pond(s) Plans and Calculations. *See* TCEQ 0602, page 3, item 11, and Construction Plans sheets 3 and 4 (showing no settling ponds). What is Vulcan referring to when it makes this distinction? The only ponds shown are the permanent BMPs. The WPAP does not discuss the “Wash Water Recycle Treatment Plant,” at all, yet it is clear that entity will have an input or discharge, which is supposed to be to permanent BMP Basins A1 and A3, according to the plan. The “settling basins” are in the quarry pit, according to TCEQ 0600 Attachment C, and will supposedly be set up to potentially receive water from the plant site. Yet Vulcan’s response also indicates that settling ponds will be used for recycling, which is what the valves, to allow water movement between the ponds and the basins, are for. To the extent that the settling ponds are tied into water management for the water quality basins, Vulcan’s attempt to make a distinction between the two is irrelevant.

Furthermore, we object that the location and volume of the quarry settling ponds were not disclosed until Vulcan recently revised the WPAP. *Compare* Original WPAP, Exhibit 2.1 *with* Revised WPAP, Exhibit 2.1. This further emphasizes the need for a water balance and the lack of substantial evidence supporting the runoff and flood models and their inputs. The original WPAP essentially had a black box where a certain volume of water could be transferred, into the quarry pits, and we question whether this has been fully accounted for in the latest revisions.

Finally, we appreciate Vulcan's admission with respect to the fact that "flooding is not the direct concern of the WPAP and other stormwater programs," and appreciate that Vulcan has made that clear to the U.S. Surface Transportation Board. The state authorization is no substitute for an adequately cumulative impact analysis under NEPA. A complete WPAP will contain relevant and necessary data to be input into that analysis. This WPAP, however, remains incomplete for the reasons noted above.

Very truly yours,

THE GARDNER LAW FIRM
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David F. Barton
ATTORNEYS FOR MCEAA, INC.

cc:

Glenn Shankle, Executive Director, TCEQ

Robert Potts, General Manager, Edwards Aquifer Authority

✓ Rini Ghosh, Section of Environmental Analysis, STB

Bobby Caldwell, Region 13 Water Section Manager